

1983 August 1

[SAVVIDES, J.]

KOULOUMBIS PANAYIOTIS AND OTHERS,

*Plaintiffs,*

v.

THE SHIP "MARIA" NOW ANCHORED IN THE PORT  
OF LIMASSOL,

*Defendants.*

*(Admiralty Action Nos. 73-85/82).*

5 *Admiralty—Practice—Execution—Ship—A kind of movable property  
which can be seized in execution by a writ of fi. fa.—Power to  
issue such writ is vested in the Registrar—Directions from the  
Court not necessary—Rules 168-171 of the Cyprus Admiralty  
Jurisdiction Order, 1893.*

10 The applicants who were judgment-creditors in a series of  
actions against the defendant ship prayed for an order directing  
the Marshal to seize or attach and sell the defendant ship in  
execution of the judgments given in such actions. The  
applications were based on the Cyprus Admiralty Jurisdiction  
Order, 1893, rules 168-171.

15 *Held*, that a ship is a kind of movable property which can  
be seized in execution by a writ of fi.-fa. under rule 168 of the  
Cyprus Admiralty Jurisdiction Order, 1893; that under rules  
168-171 the power to issue such writ is vested in the Registrar  
of the Court who is the competent person to deal with the matter,  
on the written application of the judgment-creditor addressed

Rule 168 provides as follows:

"168. Where any party shall desire to obtain execution of a judgment or order by sale of movable property or by attachment of movable property, he shall make a written application for the same to the Registrar, and at the same time produce to the Registrar an office-copy of the judgment or order sought to be executed.

The application shall be signed by the judgment creditor or his advocate and shall be filed".

to him; that there is no provision under such rules that any directions from the Court are necessary before the Registrar proceeds with the exercise of his powers under rules 168-171; and that, therefore, the present applications were not necessary under rules 168-171 of the Admiralty Rules and have to be dismissed. 5

*Applications dismissed.*

Cases referred to:

*Behnke v. Bede Shipping Co. Ltd.* [1927] 1 K.B.D. 649 at p. 659;

*The Joannis Vatis (No. 2)* [1922] P. 213 at p. 219, 225, 226;

*The Wexford* [1888] 13 P.D. 10; 10

*The Ricuna* (1974) Folio 380 (unreported) (see Annual Practice 1982 Vol. 1 p. 1238).

#### Applications.

Applications by the judgment - creditors for an order directing the Marshal to seize or attach and sell the defendant ship. 15

*P. Pavlou*, for applicants judgment-creditors.

*M. Eliades* with *A. Skordis*, for the defendant ship.

*M. Montanios* with *E. Montanios*, for the intervener.

*L. Papaphilippou*, for the caveator under Caveat No. 21/82.

*Cur. adv. vult.* 20

SAVVIDES J. read the following decision. The applicants who are judgment creditors in a series of actions against the defendant ship pray by their present applications for an order directing the Marshal to seize or attach and sell the defendant ship in execution of the judgments given in the above actions. 25

The facts relied upon in support of the applications are set out in an affidavit sworn by an advocate's clerk at the office of counsel for applicants and they are briefly to the effect that judgments were entered in favour of applicants and that any period of stay of execution has expired; that nothing was paid by the defendant and that the defendant ship is the only property that can be seized and sold in satisfaction of the judgments. 30

The applications are based on the Cyprus Admiralty Jurisdiction Rules 1893 and in particular, rules 168 - 171, 203, 226 and 227. Rules 168 - 171 are the rules regulating the procedure for the issue of a writ of execution of movables in satisfaction of a judgment debt, rule 203 refers to the form of applications to the Court and rules 226 and 227 refer to the duties and powers of the Marshal when a warrant, writ or other instrument issued by the Court is addressed to him.

The applications were made ex-parte but following directions from the Court, notice of same was given to all parties concerned.

By a second set of applications filed on the same day in each of the above actions, the applicants apply for an order of the Court appointing the Marshal of the Court or any other person to appraise the defendant ship, which is under the arrest of the Court and/or to sell the same either with or without appraisal by private treaty or by public auction. Such applications are based on rule 74 which provides for the appraisal and sale of property under the arrest of the Court.

Both sets of applications were opposed by the defendant ship and by a caveator under Caveat 21/82 filed on the 9th July, 1982. On the date when all applications came up for hearing before me, all counsel concerned agreed that the present applications be heard first, and the applications for appraisal and sale under rule 74 be adjourned and be heard after the determination of the present applications.

Counsel for applicants in arguing his case submitted that though under our Admiralty Rules execution may be effected by the issue of a writ of movables under rule 168, without a previous application to the Court, the reason that he filed the present applications was because when he attended the Registrar for the purpose of applying for the issue of writs of execution, he was requested by the Registrar to apply to the Court for directions for execution. Irrespective of such request, counsel contended that he was entitled to make the present applications for directions by the Court as there was power vested in the Court to make directions in the case.

The mode of execution in Admiralty actions is regulated by rules 168 - 182 of the Cyprus Admiralty Rules. Under such

Rules provision is made for the issue of a writ of execution for the sale of movables, immovable property, stay of execution and any other matter related thereto. Rule 168 provides as follows:-

"168. Where any party shall desire to obtain execution of a judgment or order by sale of movable property or by attachment of movable property, he shall make a written application for the same to the Registrar, and shall at the same time produce to the Registrar an office copy of the judgment or order sought to be executed. 5 10

The application shall be signed by the judgment creditor or his advocate and shall be filed."

In the case of execution against immovable property, the writ is issued by the Court after application by the party desiring to obtain execution (rule 172). 15

A writ of execution of movables issued by the Registrar is executed by the Marshal and after execution, it must be returned by him to the Court endorsed with a statement of what had been done thereunder and of the amount of costs incurred in such execution. 20

For rule 168 to apply, it has to be examined whether a ship is movable property subject to attachment and sale, as provided by such Rule. The question which, therefore, poses for consideration is whether a ship is "goods or chattels" subject to seizure in execution of a judgment. 25

"Goods" are defined under our Sale of Goods Law, Cap. 267 as meaning -

"every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale." 30

Also, in Vol. 1 of the British Shipping Laws - Admiralty Practice, first edition under paragraph 275 which deals with applications for the sale of *res pendente lite* under Order 50, rule 2 of the R.S.C. in England, it reads: 35

5 "Although this is the rule and *although the words 'goods, wares or merchandise are wide enough to cover a ship, such applications have a long history in the Admiralty Court both before and since 1875 and whether made by parties or by the marshal.'*" (The underlining is mine).

In the "Words and Phrases Legally Defined", Second Edition, Vol. 2, under the word "Goods" the following definition of goods is given as appearing in a number of English Acts:

10 "Goods' include all chattels personal other than things in action and money, and in Scotland all corporeal movables except money. The term includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale (Sale of Goods Act 1893, s. 62).

15 .....  
 'Goods' includes ships and aircraft, minerals, substances and animals (including fish), and references to the production of goods include references to the getting of minerals and the taking of such animals (Restrictive Trade Practices Act 1956, s. 36(1)).

20 .....  
 'Goods' includes vehicles, vessels, aircraft and animals; and generally includes articles and property of any description (Trading Stamps Act 1964, s. 10).

25 'Goods' includes fish, livestock and animals of all descriptions (Harbours Act 1964, s. 57).

'Goods' includes vehicles, vessels, aircraft and animals, and generally articles of any description (Advertisements (Hire-Purchase) Act 1967, s. 7).

30 'Goods' includes ships and aircraft, things attached to land and growing crops (Trade Descriptions Act 1968, s. 39(1))."

The construction of section 62 of the English Sale of Goods Act, 1893 and the question whether a ship is a personal chattel  
 35 within the definition of goods was considered in *Behnke v. Bede Shipping Company, Limited* [1927] 1 K.B.D. 649. Wright, J., in dealing with this question, had this to say at p. 659:

"I have found that a contract for the sale and purchase of the City was concluded between the defendants and the plaintiff, but it is contended that it is not enforceable by reason of s. 4 of the Sale of Goods Act, 1893. It is curious that it has not been decided whether a ship comes within the description of 'goods' under that section. Sect. 62 of the Act defines 'goods' as 'all chattels personal other than things in action and money.' A ship is clearly a chattel personal. It is true that some provisions of the Act do not apply to it, e.g., the rule as to market overt. A British ship is also a chattel which is subject to special rules as to registration and transfer under the Merchant Shipping Act, though a British ship sold to a foreigner would come in a different category. But s. 4 of the Act relates to the antecedent contract, not the actual transfer, and ought logically to apply to so valuable a chattel as a ship. A contract for the building of a ship was held by Romer J. to be a contract for the sale of goods within the Act in the case of *In re Blyth Shipwilding and Dry Docks Co.*: compare *Sir James Laing & Sons, Ltd. v. Barclay, Curle & Co.* I am of opinion that s. 4 of the Act applies, and so decide."

In *The Joannis Vatis* (No. 2) [1922] P. 213, the President of the Admiralty Court had this to say at p. 219:

"The plaintiffs' contention before me was that the judgment recovered by them ought to be enforced by any process of execution which is at the disposal of the Court, and that arrest and sale under the jurisdiction in Admiralty and seizure and sale by the sheriff are complementary means of recovering payment of the debt established by the decree. The right to issue new process of execution after complete realisation of the res in the action in rem was based in the main upon the judgments of this Court in *The Freedom* and *The Dictator*, and of the Court of Appeal in *The Gemma*. Reliance was also placed on the judgment of Sir Samuel Evans P. in *The Dupleix*, where the principles laid down in *The Gemma* were applied to a case closely resembling the present."

And at p. 225:

"There remains to determine what process of execution is available to the plaintiffs as against the defendants. Under

5 the Rules of the Supreme Court (Order XIII, r. 3) a judgment for recovery by or payment to any person of money may be enforced by any of the modes in which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred to the High Court by the Judicature Act of 1873."

And concluded as follows at page 226:

10 "This being so, the plaintiffs are entitled to a declaration that the amounts I have already indicated remain due to them on their judgment and that the same were at the date when bail was given by the defendants and now are enforceable by seizure and sale of the Joannis Vatis by a sheriff under a writ of fi.fa."

15 I am, therefore, of the opinion that a ship is a kind of movable property which can be seized in execution by a writ of fi.fa. under rule 168 of our Admiralty Rules.

20 Besides the above mode of execution, however, there is power vested in the Court in the exercise of its Admiralty Jurisdiction to order the sale of any property under the arrest of the Court through the Marshal of the Court under Admiralty rules 74 - 77. The following is provided under rule 74:

25 "74. It shall be lawful for the Court or Judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisal, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship."

30

For the Court to exercise its power under rule 74, the subject-matter property should be under the arrest of the Court. A question which arises under this rule is when a ship may be deemed as being under the arrest of the Court.

35 In *The Wexford* [1888] 13 P.D. 10 it was held that for this Rule to be applicable the res must be in the hands of the Court. It has, however, been the practice of the Admiralty Court in

England to require that the res be under arrest in the action in which an order for appraisal and sale is sought. This practice was approved in *The Ricuna* (1974) Folio 380 (unreported) (see Annual Practice 1982, Vol. 1, p. 1238).

Therefore, for rule 74 to come into play, the ship should be under the arrest of the Court in the particular action. The fact that the ship is under arrest in another action, is not sufficient. In any event, the applicants are not relying in the present applications on rule 74 but their applications are based on rules 168 - 171.

It is clear from their contents that rules 168 - 171 regulate the procedure for the issue of a writ of execution of movables. By the said rules the power to issue such writ is vested in the Registrar of the Court who is the competent person to deal with the matter, on the written application of the judgment-creditor addressed to him. There is no provision under such rules that any directions from the Court are necessary before the Registrar proceeds with the exercise of his powers under rules 168 - 171. In fact, going through the file of the case, I have noticed that writs the applicants applied on 23.9.82 for the issue of execution against the defendant ship and the Registrar of this Court had no difficulty in granting the application and issuing such writs addressed to the Marshal for the seizure of the defendant ship, its appraisal and sale in execution of the judgments.

In the light of the above, I have come to the conclusion that the present applications were not necessary under rules 168 - 171 of the Admiralty Rules and therefore, they have to be dismissed.

In view of the statement made today by counsel for respondents that they do not claim any costs, the applications are dismissed with no order for costs.

*Applications dismissed with no order as to costs.*